



22500 Salamo Road  
West Linn, Oregon 97068  
<http://westlinnoregon.gov>

# **WEST LINN CITY COUNCIL MEETING NOTES April 29, 2024**

## **[Call to Order \[6:00 pm/5 min\]](#)**

### **Council Present:**

Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.

### **Staff Present:**

Deputy City Manager Elissa Preston, City Attorney Bill Monahan, City Recorder Kathy Mollusky, and Senior Planner John Floyd.

## **[Approval of Agenda \[6:05 pm/5 min\]](#)**

Council President Mary Baumgardner moved to approve the Agenda for the April 29 Special Meeting of the West Linn City Council. Councilor Leo Groner seconded the motion.

**Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.**

**Nays: None.**

**The motion carried 5 - 0**

### [Public Comment \[6:10 pm/10 min\]](#)

There was none.

### [Business Meeting \[6:25 pm/10 min\]](#)

#### [Agenda Bill 2024-04-29-01: Final Decision: Appeal of approval of a Class II Design Review \(DR-23-01\) to construct a new commercial building at 1919/1949 Willamette Falls Drive](#)

Senior Planner Floyd stated Council is here tonight to adopt findings as part of the final decision and order for AP-24-01, an appeal of a new commercial building on Willamette Falls Drive. Council heard the appeal on April 15, continued it to April 22 where Council voted five to zero to deny the appeal with the modification of one condition. The language of that condition was worked out at last week's meeting and approved subject to adoption of findings that staff have brought back to Council today. The final order and decision were posted earlier today and at 5:00 pm a revised version was issued with a couple of minor edits. The changes included one typo on page one and some additional findings on page three.

City Attorney Monahan stated the changes are on Page 3, IV, (5). It incorporates the findings of the Planning Commission into Council's decision.

#### [Redlined Final Decision and Order](#)

#### [Final Decision and Order - Clean Copy](#)

Council President Mary Baumgardner moved to approve the final decision and order for AP-24-01. Councilor Leo Groner seconded the motion.

**Ayes: Mayor Rory Bialostosky, Council President Mary Baumgardner, Councilor Carol Bryck, Councilor Leo Groner, and Interim Councilor Kevin Bonnington.**

**Nays: None.**

**The motion carried 5 - 0**

#### [Agenda Bill 2024-04-29-02: City Attorney Search Update](#)

Deputy City Manager Preston informed Council that Lynn Barboza with SGR is the recruiter Council hired last year. This is the second time the City has gone out, the last search did not result in anything fruitful. The recruitment was open from March 25 to April 28 with the same parameters Council voted on last year and there are four applicants. The four applications will be reviewed by the search committee Council appointed last year to see if the applicants can be reduced or if Council should interview all of them. Those candidates will be invited to final

interviews and the entire Council will be a part of that.

Mayor Bialostosky's direction was to move forward as quickly as possible and to incorporate the search committee into the process that includes the Planning Commission and Historic Review Board members for public involvement.

[Adjourn \[6:35 pm\]](#)

Minutes approved 6-17-24.



22500 Salamo Road  
West Linn, Oregon 97068  
<http://westlinnoregon.gov>

## **REVISED**

# **CITY COUNCIL AGENDA**

Monday, April 29, 2024

---

6:00 p.m. – Special Meeting – Virtual\*

---

1. Call to Order [6:00 pm/5 min]
2. Approval of Agenda [6:05 pm/5 min]
3. Public Comment [6:10 pm/10 min]

The purpose of Public Comment is to allow the community to present information or raise an issue regarding items that do not include a public hearing. All remarks should be addressed to the Council as a body. This is a time for Council to listen, they will not typically engage in discussion on topics not on the agenda. Time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

4. Business Meeting [6:25 pm/10 min]

Persons wishing to speak on agenda items shall complete the form provided in the foyer and hand them to staff prior to the item being called for discussion. A separate slip must be turned in for each item. The time limit for each participant is three minutes, unless the Mayor decides to allocate more or less time. Designated representatives of Neighborhood Associations and Community Advisory Groups are granted five minutes.

- a. Agenda Bill 2024-04-29-01: Final Decision: Appeal of approval of a Class II Design Review (DR-23-01) to construct a new commercial building at 1919/1949 Willamette Falls Drive
  - b. Agenda Bill 2024-04-29-02: City Attorney Search Update

5. Adjourn [6:35 pm]

*\*This City Council meeting will be virtual. The public can watch this meeting online here: [Link](#)*

*Submit written comments by email to City Council at [citycouncil@westlinnoregon.gov](mailto:citycouncil@westlinnoregon.gov). We ask that written comments be provided before noon on the day of the meeting to allow City Council members time to review your comments.*

*If you would like to speak live at this public meeting by videoconferencing software or by phone, please complete the form located at: <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> by 4:00 pm the day of the meeting to be input into our system. Instructions on how to access the virtual meeting will then be provided to you by email prior to the meeting. If you miss the deadline and would like to speak at the meeting, please fill out the form and staff will send you a link as time allows.*

*The City abides by Public Meetings law. If you believe a violation has occurred, please [click here](#) to inform the staff of your concern.*

*If you require special assistance under the Americans with Disabilities Act, please call City Hall 48 hours before the meeting date, 503-657-0331.*

*When needed, the Council will meet in Executive Session pursuant to ORS 192.660(2).*

**WEST LINN CITY COUNCIL  
FINAL DECISION AND ORDER  
FILE NOS. DR-23-01 AND AP-24-01**

**IN THE MATTER OF AN APPEAL OF A CLASS II DESIGN REVIEW AT  
1919 & 1949 WILLAMETTE FALLS DRIVE.**

**I. Overview**

At its meeting on April 15, 2024, the West Linn City Council (the “Council”) held a public hearing to consider an Appeal (the “Appeal”) of the Planning Commission’s approval of a Class II Design review at 1919 & 1949 Willamette Falls Drive for Icon Construction & Development. The appeal was timely filed by Appellants Ian and Audra Brown. The approval criteria are found in Chapters 19, 41, 46, 48, 55, 58, and 99 of the Community Development Code (CDC). The hearing was conducted pursuant to the provisions of CDC Chapter 99. On April 22, 2024 the City Council reconvened to continue its deliberations on the Appeal and voted 5 to 0 to deny the Appeal and modify the Planning Commission’s decision, with clarifying revisions to Condition 10 (noise study).

The HRB held an initial evidentiary hearing on June 13, 2023, which was noticed in accordance with CDC Chapter 99, to consider the application with three Design Exceptions (CDC Chapter 58.090) for 1. Use of Brick in lieu of wood siding; 2. Use of Hardi-Plank in lieu of wood siding and trim; and 3. Use of support posts for the corner awning. After its discussion, the HRB provided a recommendation of approval, subject to five conditions of approval and a recommendation of “further analysis” of the mezzanine area (aka third-story) by the Planning Commission.

In response to testimony and deliberations at the HRB hearing, the Applicant submitted revised plans (August 15 and September 13, 2023) to reduce the visual impact of the third story and supplemental findings to support an additional Design Exception to exceed the two-story limit. Concurrent with that change was a redesign that removed the need for support pillars under the awning. At the October 4, 2023 PC public hearing, which was noticed in accordance with CDC Chapter 99, the hearing was opened, but testimony was not received, nor did deliberations begin at the recommendation of staff and the City Attorney. The Planning Commission voted to remand the new design exception back to the HRB so it could render a decision on the Design Exception to exceed the two-story limit.

The Applicant provided additional materials for the remand hearing before the HRB on October 23, 2023. The HRB held a second public hearing, which was noticed in accordance with CDC Chapter 99, to take up the matter of the added Design Exception to exceed the two-story height limit in the WFDCDD as remanded by the PC. After receiving testimony, the HRB closed

the public hearing, deliberated, and voted to DENY the Design Exception on the grounds it failed to satisfy the approval criteria of CDC Chapter 58.090.

The applicant submitted a letter on January 29, 2024 rescinding the request for a Design Exception to exceed the two-story height limit and stated the intent to move forward with an updated design that eliminated the proposed third story. The PC held a public hearing on February 21, 2024, which was noticed in accordance with CDC Chapter 99, to consider the Class II Design Review application. After receiving public testimony, the PC closed the public hearing, deliberated, and voted to APPROVE the application with 10 conditions of approval.

Appellants submitted a timely appeal of the decision on March 11, 2024. Consistent with CDC 99.270 and 99.280, the Council conducted a de-novo hearing, considered the entire record of the case before it, and did not limit issues on appeal to those stated in the notice of appeal. The Council did not consider arguments concerning issues not either raised in the notice of appeal or raised orally or in writing during the Appeal, because the Council cannot reasonably resolve issues that are not brought to its attention during the appeal proceedings.

Appellants' Attorney Carrie Richter and Appellant Ian Brown argued on behalf of Appellant. Architect Scot Sutton and Applicant's Attorney Garrett Stephenson argued on behalf of the Applicant. James Manning offered oral testimony in support of the Application. A number of opponents to the Application also testified orally, including Danny Schreiber, Kathie Halicki, Teri Cummings, and Karie Oakes. The Council also received written testimony both in support and opposition of the Application.

The arguments on appeal concerned the following issues:

- Potential for noise generated by the roof deck;
- Whether the City should prohibit certain uses of the roof deck;
- The extent to which buffering is required to protect nearby homes from potential noises;
- Whether the building satisfies the applicable height standards, including whether it is a two-story or three-story building;
- Whether certain architectural features are allowed to exceed the minimum 35-foot height;
- Whether the Applicant must propose particular uses as part of a Type II Design Review; and
- Whether the matter must be remanded to the Historic Review Board.

At the conclusion of its April 15 Special Meeting, the Council closed the public hearing and the record, and continued its deliberations to April 22, 2024.

During Council deliberations, it was noted that the quasi-judicial process followed by this application was appropriate and the Council did not hear any identified alternative process that the City was required to follow. It was also noted that Planning Commission had reviewed all items in the record for compliance with relevant standards and criteria, and Council had not identified anything other than noise which necessitated further review.

After deliberations a motion was made by Council President Baumgardner and seconded by Councilor Groner to deny the appeal of AP-24-01 and uphold the Planning Commission Approval of DR-23-01 with specified modifications to the Noise Study Condition and directed staff to bring findings for adoption on April 29<sup>th</sup>, 2024. The motion passed unanimously.

## **II. The Record**

The record was finalized at the April 15, 2024, hearing. The record includes the entire file from DR-23-01 and AP-24-01.

## **III. 120-Day Period**

The applicant extended the 120-day period in ORS 227.178(1) from August 30, 2023 to May 2, 2024 through five written extensions contained in the record. The City Council final decision was issued within the extended 120-day period.

## **IV. Findings of Fact and Conclusions of Law**

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Icon Construction and Development.
- 3) The Council finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment, if any; and the evidence in the whole record, including any exhibits received at the hearing.
- 4) The Council finds that it has received all information necessary to make a decision based on the Agenda Report; appeal application; the Appellant's oral and written argument; the Applicant's oral and written argument; oral and written argument by the public; and evidence in the whole record.
- 5) The Council hereby incorporates and adopts as part of its Findings of Fact and Conclusions of Law the Planning Commission's Decision (Exhibit 1) and Staff Reports (Exhibit 2), to the extent those findings are consistent with the Council's written Final Decision and Order and its supplemental findings. The Council also adopts the following supplemental findings responding to arguments on appeal:

### **I. Noise**

The Council finds that the Application is a limited land use application as defined in ORS 197.015 and is therefore exclusively subject to the criteria and standards in the CDC. With respect to noise, those criteria and standards are as follows:



- CDC 55.070.D.2.h: “If staff determines before or during the pre-application conference that the land use is expected to generate noise that may exceed DEQ standards, the application shall include a noise study conducted by a licensed acoustical engineer that demonstrates that the application and associated noise sources will meet DEQ standards. Typical noise sources of concern include, but are not limited to, vehicle drive-throughs, parking lots, HVAC units, and public address systems.”
- CDC 55.100.D.3: “Structures or on-site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses in accordance with the standards in subsection C of this section where applicable.”
- CDC 55.100.D.4: “Businesses or activities that can reasonably be expected to generate noise in excess of the noise standards contained in West Linn Municipal Code Section 5.487 shall undertake and submit appropriate noise studies and mitigate as necessary to comply with the code. If the decision-making authority reasonably believes a proposed use may generate noise exceeding the standards specified in the municipal code, then the authority may require the applicant to supply professional noise studies from time to time during the user’s first year of operation to monitor compliance with City standards and permit requirements.”

The Council finds that in a Design Review it has the authority to require a noise study at two points in the Design Review process. First, it can require one as part of a Design Review application if “staff determines before or during the pre-application conference that the land use is expected to generate noise that may exceed DEQ standards.” The Council finds that CDC 55.070.D.2.h is not an applicable criterion for the Application because it is a submittal requirement, and City staff did not determine before or during the pre-application that the land use is expected to generate noise that may exceed DEQ standards.

Second, the City can require noise studies as conditions of approval under CDC 55.100.D.4. This standard has two components. The first sentence provides that applicants for “businesses or activities” that can reasonably be expected to violate the City’s noise standards can be required to submit appropriate noise studies and, if necessary, provide mitigation measures. Given that inclusion of such a study within an application is required only under CDC 55.070.D.2.h, such a finding would result in one or more conditions of approval requiring a noise study or mitigation measures.

The Council declines to impose conditions under this section, for two reasons. First, no particular use or activity of the roof deck is proposed in the Application. Second, the City does not find that reasonably likely future uses, such as incidental use of the roof deck for employees or as accessory to a food and beverage use can “reasonably be expected to generate noise in excess of the noise standards.” Although the noise standards in WLMC 5.487 are not approval criteria (and therefore do not require interpretation by the City), the City observes that certain levels of noise generated by the potential uses at issue in the Appeal, are permissible. The City relies on a reasonable person standard as to what level of noise will be bothersome, meaning that any particular noise sensitivity of the Appellants is not sufficient to implicate this section.

There is also no *ban* on the outdoor use of “Radios, Televisions, Stereos, Musical Instruments and Similar Devices” and “Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices.” Rather, their use is limited to a level below that which is “plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential areas,” and “the unreasonably loud and raucous use or operation” of these devices. For this reason, the Council rejects Appellants’ proposed condition prohibiting all sound amplification except for handheld bluetooth speakers.

Appellants have submitted evidence in the form of a study from the Acoustical Society of America which examines “noise dynamics in city nightlife.” While the study identifies the potential harm from noise from “pubs and bars,” much of the study focused on the harm caused by allowed late-night activities in those establishments. WLMC 5.487(4)(e), on the other hand, prohibits the “creation of noise in residential areas or in public places, between the hours of 9:00 p.m. and 7:00 a.m.” The study also suggests that loud noises from pubs, bars, and clubs can be disruptive to individuals living near them. The Council agrees, but does not believe the study constitutes evidence demonstrating that, for example, use of a roof deck as accessory to a restaurant (as opposed to a pub, bar, or club) is reasonably *likely* to generate noise in excess of the City’s noise standards. Balanced against this evidence is the separation between the proposed roof deck and nearby residences, the proposed location of the deck on the roof, the roof parapet and cornice along Knapps Alley, and the proposed metal panels and vegetated buffering. The Council also finds that oral testimony concerning the lack of complaints and enforcement problems with The Garage cart pod supports its conclusion.

Third, the second sentence of CDC 55.100.D.4. provides a means by which the City may require one or more the noise studies if it “reasonably believes a proposed use *may* generate noise exceeding the standards.” In such instance, the City may require the “applicant to supply professional noise studies from time to time during the user’s first year of operation to monitor compliance with City standards and permit requirements.”

Based on the evidence in the record, the Council agrees with the Planning Commission that there is the potential for one or more uses of the roof deck (which use has not been identified) to generate noise exceeding the standards. By way of distinction, while the Council disagrees that use of the roof deck by building tenants is “reasonably likely” to violate the noise standards, the Council finds that the lesser threshold—that unidentified uses of the roof deck *may* violate those standards—to be met. For this reason, the Council shall replace the current Condition 10 with the following condition of approval:

“The applicant shall submit a noise study prepared by a licensed, professional acoustical engineer as part of the first tenant improvement application for an eating and drinking establishment that takes into consideration the use of the rooftop deck for activities associated with the establishment. The noise study must identify and evaluate potential impacts that could violate the provisions of West Linn Municipal Code Chapter 5.487 and identify those mitigation steps necessary to avoid noncompliance. Design mitigations recommended in the noise study to address identified impacts shall be constructed with the tenant improvements and could include, but not be limited to, signage, physical barriers, plantings, noise reducing acoustical equipment, and follow-up studies. Subsequent to the first study, the applicant shall submit a follow-up study within one-year of occupancy of the eating and drinking establishment to be taken during a period of peak occupancy during evening business hours.”

Finally, the Council rejects Appellant’s argument that the above condition requiring one or more noise studies improperly defers a required finding such that a new hearing is required to evaluate the noise study when it is completed. As explained above, a noise study is required to be part of the Application if it is identified as a submittal requirement, which it was not here. The provisions in CDC 55.100.D.4, when read in context, allow the Council to require a noise study as a condition of approval but does not require a finding that such noise study meets particular criteria, because there are no stated criteria against which a noise study or mitigation measures must be judged. Rather, this section points to the question of whether a use can meet WLMC 5.487, the compliance with which is judged by the designated city staff responsible for monitoring noise standard compliance.

## **II. Permitted Uses**

Appellants requested that the Council impose an additional condition of approval concerning a limitation on certain land uses. Appellant's recommended condition is as follows:

"(1) The rooftop lounge shall not be used by retail customers for the consumption of food or beverages that is purchased onsite."

The Council rejects the proposed condition. Land uses in the Design District are governed by CDC 58.050 which in relevant part, provides as follows:

"All uses permitted by the underlying General Commercial zone shall be allowed pursuant to CDC 19.030, 19.040, 19.050, and 19.060, and shall require the application of the standards of this chapter."

CDC 19.030.14 allows outright "eating and drinking establishments," "food and beverage retail sales," and "general retail services." The Council finds that while the Design District does limit the extent of certain uses in buildings within the District, such limitations only apply to residential uses as set forth in 58.050. As the Application is for a limited land use decision, the Council finds that, pursuant to ORS 197.195(1) it is constrained by the use allowances in the applicable sections of the CDC.

As explained above, the Council also finds that CDC 55.070.D.2.h, 55.100.D.3, and 55.100.D.4, along with buffering requirements in CDC 55.100.C, provide the exclusive approval criteria, standards, and factors concerning potential noise issues and provide the exclusive means for addressing potential noise issues as part of a Design Review, which measures do not include restrictions on otherwise permitted uses of a building.

### **III. Buffering**

The Council finds that the proposed structure is anticipated to generate noise from mechanical equipment, which will be present regardless of use. Pursuant to CDC 55.100.C.3, the Applicant shall be required to screen all mechanical equipment, which the Applicant has proposed to do by fully enclosing the mechanical equipment within an equipment space attached to the main elevator. The Council finds that the above criterion is met for this reason.

The Council adopts Staff's proposed findings concerning CDC 55.100.C.1 in its report for the February 21, 2024 Planning Commission meeting, which are as follows:

“Staff Finding 22: Staff adopts applicant findings for these standards. The project site is surrounded on all three sides by public-right-of way and all trash and storage are enclosed by building walls. Parking is to occur within an underground garage and associated entrance approved as part of DR-16-01, with the exception of a parallel parking area along Knapps Alley. A rooftop mechanical equipment enclosure is proposed for HVAC and other equipment. See also Staff Finding 43 regarding rear setback standards in the Willamette Commercial Design District. These standards are met.”

As Staff recommended, the Council also adopts the Applicant’s finding that CDC 55.100.C.1 is satisfied with respect to buffering by the abutting rights-of-way separating the building from nearby residential uses.

The Applicant has proposed a buffer treatment between the roof deck and nearby residential uses, and will be required to construct such buffer. However, in contrast to the clear requirement for buffering of mechanical equipment, the Council does not interpret CDC 55.100.C.1 to *require* a constructed buffer between the roof deck and nearby residential uses in this instance, given the separation between the proposed commercial building and nearby residents provided by Knapps Alley and the substantial distance between the roof deck and the building’s south facade.

Even if specific buffering of the roof deck itself *were* required, the Council finds the Application provides adequate buffering based on the following factors:

- a. *The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier.*

Finding: The purpose of the proposed buffer is primarily to screen any potential activities on the roof deck from nearby residential uses. The principle purpose of the buffer is to limit light and views from the nearby residential uses. A secondary purpose of the buffer is to reduce potential noise from the rooftop.

- b. *The size of the buffer required to achieve the purpose in terms of width and height.*

Finding: Physical buffering for rooftop activities is provided by two elements, as shown on the Applicant’s Jan. 29, 2024 supplemental materials, both of which equal or exceed the width of the roof deck. First,

the rooftop cornice adjacent to Knapps Alley extends approximately 6' 6" above the roofline. Second, an additional buffer effect is provided by the 5' 6" steel panel screenwall (shown in the same Applicant materials) and proposed decorative planter. The Council finds that the proposed buffer satisfies its primary purpose as shown in the line-of-sight drawings in the Applicant's Jan. 29, 2024 submittal. The proposed buffering, including the distance from residential uses noted above, serves its secondary purpose by placing physical barriers between any potential noise sources and nearby homes. The Council finds that the proposed metal and vegetated buffer will provide some reduction in noise despite the fact it is proposed to be 5' 6" tall.

*c. The direction(s) from which buffering is needed.*

Finding: These buffers are proposed between the roof deck and Knapps Alley, in the direction of the nearest residential uses.

*d. The required density of the buffering.*

Finding: Given the commercial nature of the area, the presence of Knapps Alley between the building and residential uses, and the placement of the roof deck closer to the Willamette Blvd. side of the building, the density of any single element of the buffer need not be great. This is reflected in the line-of-sight drawings in the Applicant's Jan. 29, 2024 submittal.

*e. Whether the viewer is stationary or mobile.*

Finding: The viewers could be stationary or mobile, but the line of sight drawings demonstrate that no person will be able to see activities occurring on the roof deck from the nearest dwelling.

In conclusion, the Council finds that the presence of the cornices, rooftop façade (false front), metal screen wall, vegetation, setback of the deck from the roof edge, and intervening alley will prevent visual impacts on nearby residences and is likely to decrease noise levels otherwise audible from the roof deck.

The Council rejects Appellant's argument that CDC 55.100.C and D.3 requires additional or modified buffering to decrease noise. Subsection (D)(3) provides that "Structures or on-site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses *in accordance with the standards in subsection C of this section where applicable.*" Emphasis added. The phrase "in accordance with the standards" refers to the factors in CDC 55.100.C.1 and .3, discussed above. Contrary to Appellant's assertion, CDC 55.100.C is not just the "noise standards," but cover several elements of

compatibility, most of which were not at issue in the Appeal. The phrase “where applicable” similarly allows the City to determine whether certain types of buffering are required between uses, based on the provisions of CDC 55.100.C. As noted above, the Council finds that these standards are not directly applicable here because there are no residential uses directly adjacent to the roof deck – they are separated by an alley and a substantial portion of the roof. In the alternative, the City evaluated these factors and found that the proposed buffering is reasonably likely to reduce potential noise and visual impact, and no person testified during the appeal hearing that the city failed to evaluate any of these factors.

The Council rejects Appellant’s argument that any buffering proposed between the roof deck and nearby residential properties must be specifically designed to reduce noise or be acoustically-rated, because such a requirement is not stated in the CDC. ORS 197.195(1). The City has the authority to require specific acoustical analysis of proposed buffers prior to application approval if the need for that is identified under CDC 55.070.D.2.h, but that need was not identified here. If the conflict between uses is great, the Council finds that it has the authority to require acoustically-engineered buffers under CDC 55.100.C.1, but the potential conflict between the type of commercial building proposed here and nearby residential uses is not so great as to require such a measure, particularly given the separation between the roof deck and nearby residential uses. The Council also relies on testimony concerning the general lack of nuisance issues with The Garage cart pod.

#### **IV. Height**

The maximum height limit for the Design District is stated in 58.080.b.3, which limits buildings in the District to a maximum of 35 feet in height and two stories. CDC 41.005.A regulates how building height is measured in West Linn:

“A. For all zoning districts, building height shall be the vertical distance above a reference datum measured to the highest point of a flat roof or to the deck line of a mansard roof or to the highest gable, ridgeline or peak of a pitched or hipped roof, not including projections not used for human habitation, as provided in CDC 41.030. The reference datum shall be selected by either of the following, whichever yields a greater height of building.

1. For relatively flat sites where there is less than a 10-foot difference in grade between the front and rear of the building, the height of the building shall be measured from the proposed finished grade five feet out from the exterior wall at

the front of the building (Figure 1).”

On January 29, 2024, the Applicant submitted a revised set of plans (which plans were also dated for the Planning Commission hearing on Feb. 21, 2024), which demonstrate that the proposed building will meet the applicable height requirement.

The building is proposed to be two stories. City’s codified definition of “story” is as follows:

“That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling above. If the finished floor level directly above a basement or unused under floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter, or is more than 12 feet above grade as defined herein at any point, such basement or unused under floor space shall be considered as a story.”

This definition plainly means that the top floor must have a ceiling. The space enclosed by the building’s cornice, painted panels, and vertical pilasters does not constitute a third story because they are placed above the Building’s roof, and they *lack* a ceiling. The Building plainly meets the Design District’s limitation of building to two stories. Appellants argued that the building “reads” as three stories, but Appellants identified no design standard supporting a conclusion that such an appearance constitutes an additional story, as defined in the CDC.

Finally, the elevator shaft housing, vestibule, and mechanical equipment enclosure do not constitute a third story because they are located on top of the roof. Further, elevator shaft housings are specifically called out as “projections” in CDC 41.030, not stories. Finally, in order to be consistent with the Oregon Structural Specialty Code, the Council finds that an elevator vestibule is a projection similar to an elevator shaft housing, given that both are defined as “penthouses” and considered as part of the story below, pursuant to OSSC 1511.2.

## **V. Building Projections**

The proposed features above 35 feet and/or two stories in height are permitted.



CDC 41.030 “Projections Not Used for Human Habitation” provides as follows: “Projections such as chimneys, spires, domes, elevator shaft housings, towers, aeriels, flag poles, and other similar objects not used for human occupancy are not subject to the building height limitations of this code.” The 35-foot height limit and two story maximum are “height limits” stated in CDC 58.080.b.3. The only building elements exceeding 35 feet in height are the tops of certain decorative architectural features and the top of the elevator shaft. The Council finds that there is no relevant difference between the top of decorative architectural features and spires, domes, or towers. Therefore, these features are exempt from the 35-foot height limitation. All rooftop features are exempt from the two-story height limit because the building is proposed to be two stories, as noted above.

Finally, Appellants are incorrect that the panels, vertical pilasters, and cornices are subject to the standard in CDC 50.080.B.3, which provides that “a false front shall be considered as the peak of the building if it exceeds the gable roof ridgeline.” This standard does not apply because the Building does not have a gable roof, and therefore has no “gable roof ridgeline.”<sup>1</sup>

#### **VI. Whether the Applicant must propose particular uses as part of a Type II Design Review**

At least one opponent appeared to argue that the Application should be remanded because a particular use for the building has not been proposed. No person identified a provision in the CDC that supports this argument, the Council finds that neither the submittal requirements nor the criteria for a Design Review require identification of particular future uses.

#### **VII. Remand of the Application to the Historic Review Board**

The Council declines to remand the Application to the Historic Review Board for several reasons. First, Appellants and opponents have not identified a requirement in the CDC that the Council do so. When considering a Design Review, the HRB is empowered to make an initial decision on formal Design Exceptions. Otherwise, the HRB is empowered to “make *recommendations* to the approval authority” on a Class I or II Design Review in the Design District, and is not the approval authority for these applications. CDC 99.060.B. As the Applicant removed the originally-proposed third story, there is no additional

---

<sup>1</sup> A gable roof is “double-sloping roof that forms a gable at each end.” Webster’s Third Int’l Dictionary, Unabridged (1993)

Design Exception that the HRB must address. Therefore, any further review it might conduct would result in a new *recommendation* to the Planning Commission.

Second, remand to the HRB is not required for the Council to deny the Appeal and approve the Application. As the hearing before the Planning Commission is not restricted solely to the record before the HRB, the Planning Commission has the discretion to decide whether revisions to an application to comply with HRB feedback – as were proposed here- constitute a new application. The Planning Commission did not find that removal of the third story constitutes a new application, and the Council agrees that, at least in this instance, it does not. The Council also finds that the maximum extension of the 120-day deadline has been granted (ORS 227.178(5)), which as a practical matter precludes further review by the HRC. The Application has gone through several hearings before the HRB and the Planning Commission, which provided adequate opportunities for all concerned parties to raise their concerns.

## **V. Order**

For the reasons contained herein, the Council Hereby DENIES the Appeal (AP-24-01) and MODIFIES Condition 10 of the Planning Commission's approval of DR-23-01, thereby APPROVING the Application, subject to the following conditions:

1. Approved Plans. All alterations and improvements shall substantially conform to all submitted tentative plan sheets and supporting materials contained in Exhibit PC-01.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. These must be designed, constructed, and completed prior to final building certificate of occupancy. The City may partner with the applicant to fund additional improvements as part of the project.
3. Joint Access. Prior to final building certificate of occupancy, the applicant shall present an easement or other legal evidence of continued joint access and egress between the project site and 11th street through the existing underground parking garage and driveway onto 11th street to the east (1969 & 1993 Willamette Falls Drive), in compliance with CDC 48.020.E and 48.025.

4. Street Improvements. Prior to final building certificate of occupancy, the applicant shall mitigate any impacts to existing right-of-way improvements along Willamette Falls Drive, 12th Street, and Knapps Alley. The mitigation will include replacement of impacted pavement, curbs, planter strips, street trees, street lights, sidewalks, pedestrian crossings, and street storm drainage.
5. Knapps Alley. The applicant shall improve, including repaving, the portion of Knapps Alley adjacent to the site. This must be completed prior to the issuance of the final building certificate of occupancy.
6. Vertical Breaks. Prior to issuance of building permits, the applicant shall submit building permit plans with revised western and southern elevations that demonstrate compliance with CDC 58.080.C.7 that requires strong vertical breaks or lines regularly spaced every 25 to 50 feet.
7. Entry Doors & Pedestrian Level Windows. Prior to issuance of building permits, the applicant shall submit building permit plans with revised elevations and door details that demonstrate compliance the glazing and panel ratios for entry doors in CDC 58.080.C.13, and minimum pedestrian level window sill heights within CDC 58.080.C.15.
8. Awning. Prior to issuance of building permits, the applicant shall submit building permit plans that demonstrate compliance with the 5-foot minimum awning depth as required in CDC 58.080.C.11.
9. Lighting Plan. The applicants lighting plan shall be revised to show: (1) the location and type of lights to be used to illuminate the rooftop deck, and no part of these fixtures will be visible from neighboring properties;(2) the use of full cutoff fixtures on the rooftop deck and the rear elevation that are directed down with an luminescence area that does not reach beyond the edge of Knapp's alley and includes glare guards that block glare from the sides; and (3) that a qualified lighting designer has reviewed the revised plan and concluded that, overall, the exterior lighting scheme will be less bright than the companion 1969 building.
10. Noise Study. The applicant shall submit a noise study prepared by a licensed, professional acoustical engineer as part of the first tenant improvement application for an eating and drinking establishment that takes into consideration the use of the rooftop deck for activities associated with the establishment. The noise study must identify and evaluate potential impacts that could violate the provisions of West Linn Municipal Code Chapter 5.487 and identify those mitigation steps necessary to avoid noncompliance. Design mitigations recommended in the noise study to address identified impacts shall be constructed with the tenant improvements and could include, but not be limited to, signage, physical barriers, plantings, noise reducing acoustical equipment, and follow-up studies. Subsequent to the first study, the applicant shall submit a follow-up study within one-year of occupancy of the eating and

drinking establishment to be taken during a period of peak occupancy during evening business hours.

\_\_\_\_\_  
RORY BIALOSTOSKY, MAYOR  
CITY OF WEST LINN

\_\_\_\_\_  
DATE

Mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Therefore, this decision becomes effective at 5 p.m., \_\_\_\_\_, 2024.